Ling Hock Ling v Tai Lian Development Co

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO C–02–409 OF 1995
GOPAL SRI RAM, AHMAD FAIRUZ AND MOKHTAR SIDIN JJCA
29 JUNE 2006

Evidence — Documentary evidence — Books of account — Whether ledger entries were admissible to prove debt — Evidence Act 1950 s 34

Evidence — Documentary evidence — Documents made in course of business — Plaintiff's letters copied to defendant described defendant as subcontractor — No protest from defendant — Plaintiff's payment vouchers also signed by defendant — Whether sufficient proof that defendant was plaintiff's subcontractor

The plaintiff entered into a contract with the Federal Land Development Authority ('FELDA') to carry out weeding and fertilising work in Schemes 2 and 3 in Cini Timur Tiga. According to the letters exchanged between the plaintiff and FELDA the defendant was described as subcontractor. These letters were copied to the defendant. From time to time, the defendant drew monies from the plaintiff as evidenced by the vouchers some of which were signed by the defendant himself. Additionally, there were entries in the plaintiff's ledger which confirmed payments made to the defendant. The plaintiff led oral evidence at the trial to show the relationship of subcontractor, of the payments made to the defendant and the reason for those payments. The defendant's case was that he was never the subcontractor and he kept to that story when he gave evidence. There were two issues in this appeal, ie: (1) whether the defendant was the plaintiff's subcontractor; and (2) whether the plaintiff had proved on a balance of probabilities that it had sold and delivered goods and rendered financial assistance to the defendant. The learned trial judge decided for the plaintiff on both issues and the defendant appealed.

Held, dismissing the appeal:

(1) The defendant upon receiving copies of the plaintiff's letters to FELDA did not make any protest about his description as a subcontractor. If it was not the truth he should have said so. But he kept quiet. In these circumstances it did not lie in his mouth to say that he was not the plaintiff's subcontractor. The defendant's complaint in respect of the first issue was therefore without merit (see para 3).

(2) As for the proof of the debt, the entries in the plaintiff's ledger, these were taken into account by the learned judge together with the other evidence when making his findings. He was correct in the approach he took. Those entries were clearly admissible under s 34 of the Evidence Act 1950 (see para 4).

Of course, if there is no evidence apart from the regularly kept books of account, a litigant cannot rely solely upon the entries in his ledger to prove his case against his opponent (see para 6). But, this was a case in which there was other evidence which the learned judge accepted as credible. So the ledger entries became relevant, admissible and were very properly taken into account by the learned judge. It followed that there was really nothing in the second issue raised by the defendant (see para 7).

[Bahasa Malaysia summary

Plaintif telah memasuki satu kontrak dengan Lembaga Kemajuan Tanah Persekutuan ('FELDA') untuk melakukan kerja-kerja merumput dan membaja di Skim 2 dan 3 Cini Timur Tiga. Menurut surat-surat di antara plaintif dan FELDA, defendan digambarkan sebagai kontraktor sub. Surat-surat ini disalinkan kepada defendan. Dari masa ke semasa, defendan mengeluarkan wang dari plaintif sebagaimana yang ditunjukkan melalui baucar-baucar yang setengahnya ditandatangani oleh defendan sendiri. Tambahan lagi, terdapat kemasukan di dalam lejar plaintif yang mengesahkan bayaran-bayaran dibuat kepada defendan. Plaintif memberikan keterangan lisan semasa perbicaraan untuk menunjukkan perhubungan kontraktor sub, bayaran-bayaran yang dibuat kepada defendan dan sebab bayaran-bayaran tersebut. Kes defendan adalah beliau tidak pernah menjadi kontraktor sub dan beliau berpegang kepada cerita ini apabila beliau memberi keterangan. Terdapat dua isu di dalam rayuan ini iaitu: (1) sama ada defendan adalah kontraktor sub plaintif; dan (2) sama ada plaintif telah membuktikan pada imbangan kebarangkalian yang ia telah menjual dan menghantar barangan-barangan dan telah memberikan bantuan kewangan kepada defendan. Yang arif hakim memberi keputusan memihak kepada plaintif untuk kedua-dua isu tersebut, maka defendan merayu.

Diputuskan, menolak rayuan:

(1) Defendan setelah menerima salinan-salinan surat plaintif kepada FELDA tidak membuat sebarang bantahan mengenai gambarannya sebagai kontraktor sub. Jika ianya tidak benar, beliau sepatutnya memberitahu. Tetapi beliau berdiam diri. Di dalam keadaan ini, tidak wajar beliau mengatakan yang beliau bukan kontraktor sub plaintif. Aduan defendan berhubung dengan isu pertama dengan itu tidak ada merit (lihat perenggan 3).

(2) Berhubung dengan bukti hutang, catatan-catatan di dalam lejar plaintif, diambil kira oleh yang arif hakim bersama dengan keterangan lain apabila beliau membuat keputusan. Beliau telah bertindak betul dalam pendekatannya. Catatan-catatan tersebut dengan jelasnya boleh diterima di bawah s 34 Akta Keterangan 1950 (lihat perenggan 4). Memang, jika tidak terdapat keterangan selain daripada buku-buku akaun yang biasa, seseorang litigan tidak boleh bergantung semata-mata kepada catatan-catatan di dalam lejarnya untuk membuktikan kesnya terhadap lawannya (lihat perenggan 6). Tetapi di dalam kes ini yang mana terdapat keterangan lain yang mana telah diterima oleh yang arif hakim sebagai boleh dipercayai. Jadi, catatan-catatan di dalam lejar menjadi relevan, boleh diterima dan diambilkira oleh yang arif

hakim. Dari itu sebenarnya tiada apa yang tidak betul di dalam isu kedua yang dibangkit oleh defendan (lihat perenggan 7).] A

Notes

For cases on books of account, see 7(1) *Mallal's Digest* (4th Ed, 2006) paras 1132–1133.

For cases on documents made in course of business, see 7(1*) Mallal's Digest* (4th Ed, 2006) paras 1132–1133. B

Cases referred to

Beni v Bisan Dayal & Anor AIR 1925 Nag 445 (refd)

Popular Industries Limited v Eastern Garment Manufacturing Sdn Bhd [1989] 3 MLJ 360 (refd) C

State of Andhra Pradesh v Cheemalapati Ganeswara Rao AIR [1963] SC 1850 (refd)

Wong Hon Leong David v Noorazman bin Adnan [1995] 3 MLJ 283 (refd)

Jacob Goldie (Balendran & Bodi) for the appellant.

Mura Raju (Mura Raju & Co) for the respondents. D

Gopal Sri Ram JCA (delivering judgment of the court):

[1] There are two issues in this appeal. First, whether the defendant was the plaintiff's subcontractor; second, whether the plaintiff had proved on a balance of probabilities that it had sold and delivered goods and rendered financial assistance to the defendant. The learned trial judge decided for the plaintiff on both issues and the defendant appealed to us. The brief facts relevant to this appeal are as follows. E

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[2] The plaintiff entered into a contract with the Federal Land Development Authority (FELDA) to carry out weeding and fertilising work in schemes 2 and 3 in Cini Timur Tiga. According to the letters exchanged between the plaintiff and FELDA the defendant was described as subcontractor. These letters were copied to the defendant. From time to time, the defendant drew monies from the plaintiff as evidenced by the vouchers some of which were signed by the defendant himself. Additionally, there are entries in the plaintiff's ledger which confirm payments made to the defendant. The plaintiff led oral evidence at the trial to show the relationship of subcontractor, of the payments made to the defendant and the reason for those payments. That reason was to provide financial assistance to the defendant to enable him to perform his subcontract. The defendant's case was that he was never the subcontractor and he kept to that story when he gave evidence. It is however clear from a reading of the notes of evidence taken by the learned judge that the defendant found himself in great difficulty when confronted with the correspondence, a fact mentioned by the judge in his judgment. G H

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[3] With these facts in hand we turn to consider the first issue. Now, here we have a case where the defendant upon receiving copies of the plaintiff's letters to FELDA did not make any protest about his description as a subcontractor. If it was not the truth he should have said so. But he kept quiet. In these circumstances it does not lie in his mouth to say that he was not the plaintiff's subcontractor. See, *Wong Hon*

Leong David v Noorazman bin Adnan [1995] 3 MLJ 283. The defendant's complaint in respect of the first issue is therefore without merit.

[4] As for the proof of the debt, the entries in the plaintiff's ledger, these were taken into account by the learned judge together with the other evidence when making his findings. In our judgment he was correct in the approach he took. Those entries were clearly admissible under s 34 of the Evidence Act 1950 which provides as follows:

> Entries in books of accounts regularly kept in the course of business are relevant whenever they refer to a matter into which the court has to inquire, but the entries shall not alone be sufficient evidence to charge any person with liability.

[5] In *State of Andhra Pradesh v Cheemalapati Ganeswara Rao* AIR [1963] SC 1850 the Indian Supreme Court explained the way in which the section is to be applied:

> What it does is to make entries in books of account regularly kept in the course of business relevant in all proceedings in a court of law. These entries are, however, not by themselves sufficient to charge any person with liability. Therefore, when A sues B for a sum on money it is open to him to put his account books in evidence provided they are regularly kept in the course of business and show by reference to them that the amount claimed by him is debited against B. The entry though made by A in his own account books, and though it is in his own favour is a piece of evidence which the court may take into consideration for the purpose of determining whether the amount referred to therein was in fact paid by A to B. The entry by itself is of no help to A in his claim against B but it can be considered by the court along with evidence of A for drawing the conclusion that the amount was paid by A to B. To this limited extent entries in the account books are relevant and can be proved. Section 34 does not go beyond that.

[6] Of course, if there is no evidence apart from the regularly kept books of account, a litigant cannot rely solely upon the entries in his ledger to prove his case against his opponent. And that is what happened in *Popular Industries Limited v Eastern Garment Manufacturing Sdn Bhd* [1989] 3 MLJ 360 where Edgar Joseph Jr J (as he then was) applied the following passage in the judgment of Wadegaonkar J in *Beni v Bisan Dayal & Anor* AIR 1925 Nag 445 at p 446:

> Mere entries in books of account are not by themselves sufficient to charge any person with liability (vide s 34 of the Evidence Act). The reason is that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of third parties. There must be independent evidence of the transaction to which the entries relate and as no such evidence has been adduced in this case the court below was wrong in holding that defendant no I had paid the money to plaintiff for payment of the kist for January 1921 …

[7] But, as we have already pointed out, this is a case in which there was other evidence which the learned judge accepted as credible. So the ledger entries became relevant, admissible and were very properly taken into account by the learned judge. It follows that there is really nothing in the second issue raised by the defendant.

[8] This is a case in which based on the totality of the evidence before him the learned judge accepted the plaintiff's version about the events and rejected the

defendant's. He was plainly entitled to do so for it was within his province as the primary trier of fact to prefer, for good reasons, the plaintiff's version to that of the defendant. We must say at once that the learned judge in this case gave good reasons for preferring the plaintiff's story.

[9] In this state of affairs, we, as an appellate court must defer to the findings of fact based on the credibility of witnesses seen and heard by the learned trial judge. As stated by Lord Hoffmann in *Ryan v Jarvis* [2005] UKPC 27 when delivering the advice of the Board in an appeal from *Antigua & Barbuda*:

> It is of course most unusual for an appellate tribunal to reverse a trial judge's findings on credibility on the ground that the evidence which he rejected has the ring of truth. The true or false note is generally more audible to the judge who hears and sees the witnesses than to the appellate court reading the record.

[10] That we believe is precisely the case here. More so, because we find no misdirection by the learned judge on his appreciation of the facts. Accordingly, we found it unnecessary to call upon the plaintiff's counsel for a reply.

[11] For the reasons already given, this appeal was dismissed and those orders made that are usually consequent upon an unsuccessful appeal.

[12] My learned brothers, Ahmad Fairuz (now Chief Justice) and Mokhtar Sidin JJCA have seen this judgment in draft and have expressed their agreement with it.

Appeal dismissed.

Reported by Loo Lai Mee